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2
3 BEFORE THE
4 WASHINGTON UTILITIES AND TRANSPORTATION
5 COMMISSION

6 IN THE MATTER OF THE PETITION FOR
7 ARBITRATION OF AN INTERCONNECTION
8 AGREEMENT BETWEEN

DOCKET No. UT-023043

9 **LEVEL 3 COMMUNICATIONS, LLC.,**

10 AND

11 **CENTURYTEL OF WASHINGTON, INC.,**

12 PURSUANT TO 47 U.S.C. § 252
13

14
15 **REBUTTAL TESTIMONY OF TIMOTHY J. GATES**
16 **ON BEHALF OF LEVEL 3 COMMUNICATIONS, LLC**

17 **NOVEMBER 1, 2002**
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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A. My name is Timothy J Gates. My business address is QSI Consulting, 917 W. Sage Sparrow Circle, Highlands Ranch, Colorado 80129.

Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I am.

II. PURPOSE OF TESTIMONY AND SUMMARY OF CONCLUSIONS

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to certain issues and statements in the testimony of Mr. William H. Weinman and Mr. R. Craig Cook on behalf of CenturyTel. I will show the inappropriate and unworkable nature of CenturyTel's proposals in this case and the negative impacts that such proposals would have on competition, the ISP industry and consumers in Washington.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS AND FINDINGS.

A. Based on my review of the testimony of CenturyTel, I have reached the following conclusions:

- Level 3's service is a competitive alternative to ILEC FX and FX type services and should be treated in the same manner as other FX services;

- Level 3's service is not a "toll" service and is not comparable to traditional 800 service;
- CenturyTel's comments about the nature of Level 3's service are inconsistent with the manner in which it treats its own virtual NXX/FX services and those of other LECs;
- To impose access charges on Level 3's service would be discriminatory and violate the FCC's ESP exemption;
- Level 3 is not violating the NANPA Numbering Guidelines. Indeed, the Guidelines specifically anticipate the use of numbers for FX services;
- The purpose of Level 3's service is to respond to customer demand for a local presence where a physical presence is not economically justified;
- Level 3 is not attempting to avoid access charges. The Level 3 service is a virtual NXX/FX service to which access charges do not and should not apply;
- CenturyTel's arguments that it must impose access charges on Level 3 or face charges of discrimination are simply wrong;
- CenturyTel's proposals are discriminatory and impose artificial costs on new entrants to the detriment of competition and consumers;
- Level 3's presence in the market will not result in increased costs, impact local rates, result in traffic shifts among services or harm universal service in Washington;
- Level 3 should be permitted to provide its service in competition with similar services offered by CenturyTel and other ILECs in Washington, without additional conditions or compensation.

III. LEVEL 3 IS NOT OFFERING FREE INBOUND CALLING FOR ISP CUSTOMERS

Q. AT PAGE 6 OF MR. WEINMAN'S TESTIMONY, HE STATES THAT UNDER LEVEL 3'S PROPOSED SERVICE, CUSTOMERS LOCATED IN CENTURYTEL'S SERVICE TERRITORY WOULD BE ABLE TO CALL A

**LEVEL 3 CUSTOMER (AN ISP) NOT LOCATED IN THE SAME LOCAL
CALLING AREA ON A TOLL FREE BASIS. PLEASE RESPOND.**

A. There are several issues raised by the statement of Mr. Weinman. First, he makes it sound as if Level 3 will single-handedly change the way the telecommunications industry operates in rating and routing calls. This is simply not true. As CenturyTel is well aware, calls outside the traditional local calling area are rated local in many cases. There are several mechanisms in place that allow that a Washington customer to place or receive a local call even when the call might have been interexchange in nature under other circumstances – remote call forwarding (“RCF”), traditional extended area service (“EAS”), foreign exchange (“FX”) service, IPRS, CyberPOP, Wholesale Dial, and other similar services. So the first important point is that local calls can and do originate and terminate in different local calling areas. This has been true for decades and carriers are offering new services that also provide local calling between exchanges. It is also true that these mechanisms can change the manner in which intercarrier compensation is paid – take, for example, a CLEC customer who places a local call to an ILEC customer purchasing RCF in order to forward calls from one local calling area to another. To the CLEC and its customer, the call looks local; absent CenturyTel informing each CLEC as to which CenturyTel customers were purchasing RCF and the physical locations to which calls were being forwarded, the CLEC would have no reason to think it was entitled to originating access based upon the calling and called numbers. Thus, even though *CenturyTel* may get toll charges from its customers who

1 purchase RCF to forward calls from one local calling area to another, that doesn't
2 change the compensation that CenturyTel *pays* to the other carrier who might be
3 involved in any given call flow. Thus, it is clear error for CenturyTel to argue that Level
4 3's proposed service would somehow change the current way in which calls are rated
5 for intercarrier compensation purposes.

6 Second, the retail fee basis of the call is a distinction without a difference. While
7 all of the services I discussed above have costs and revenues associated with them, to
8 the customer many of the calls are "toll free." For instance, the customer dialing an FX
9 number in one exchange and reaching a florist in another exchange is not billed for
10 anything other than a local call. The manner in which consumers are billed for services
11 is not an issue in this proceeding.

12 **Q. MR. WEINMAN AT PAGE 7 OF HIS TESTIMONY STATES THAT LEVEL**
13 **3'S PROPOSAL COULD AFFECT ANY OR ALL OF THE EXCHANGES**
14 **OPERATED BY HIS COMPANY IN WASHINGTON. IS THAT TRUE?**

15 A. While I don't know Level 3's marketing plans, it is conceivable that some or all of
16 CenturyTel's customers could dial a Level 3 customer at some point in time. That
17 being said, however, one should not conclude that a call from a CenturyTel customer to
18 a Level 3 customer results in any harm to consumers or to CenturyTel; indeed, the
19 opposite is true.

20 It must be remembered that these are calls originated by CenturyTel customers
21 and not Level 3 customers. The calls that the CenturyTel customers choose to place,

1 and they are being made to Level 3 customers. So when Level 3 terminates the calls, it
2 is providing a service to both CenturyTel and CenturyTel's customers as well as its own
3 customers. Further, and importantly, Level 3 is not seeking compensation for
4 terminating these calls for CenturyTel. As such, CenturyTel is actually saving money –
5 by avoiding all costs of termination – on every call that its customers make to a Level 3
6 customer.

7 CenturyTel has failed to show – and cannot show – how Level 3's service
8 imposes any additional costs on it or its customers. This is important because
9 CenturyTel is seeking additional compensation for these calls when the costs don't
10 justify the rates.

11 **Q. BUT THERE ARE COSTS – OVER AND ABOVE THE LOCAL**
12 **ORIGINATION COSTS -- ASSOCIATED WITH TRANSPORTING A**
13 **TRADITIONAL FX CALL TO A FOREIGN EXCHANGE, CORRECT?**

14 A. Yes. The additional costs incurred by the carrier in providing FX service are paid by
15 the person purchasing the FX service. Those additional costs of transport do not make
16 the call a “toll call”. Moreover, one must consider who bears the additional costs of
17 that FX transport – in this case, it would be Level 3, and thus CenturyTel would have
18 no additional costs of transport associated with a FC call beyond that involved in
19 originating any other local call.

1 In Mr. Weinman's exhibit (WHW-2) he identifies the "interexchange facilities,"
2 and those are paid for by the purchaser of the FX service. But again, to the customer
3 dialing the FX number, there is no "toll" charge.

4 **Q. IS LEVEL 3'S SERVICE HANDLED IN A SIMILAR MANNER?**

5 A. Yes. The CenturyTel customer would dial a local number assigned to a Level 3
6 customer, and CenturyTel would be responsible for handling that local call like any
7 other local call. As mentioned earlier, however, once handed off to Level 3, it is *Level*
8 *3* who becomes responsible for transporting the call to Level 3's customer over what
9 Mr. Weinman has termed the "interexchange facilities." Whether Level 3 uses a
10 private line, leased interexchange facilities, builds its own facilities or uses some other
11 novel approach to transporting the call, is of no consequence – the important points are
12 that CenturyTel bears no more responsibility for originating that call than any other local
13 call, and that it is Level 3 who bears *any additional* cost generated as a result of the
14 customer's more distant location. This is where CenturyTel seems to miss the mark –
15 under a traditional FX retail scenario, or even perhaps a jointly-provided FX scenario,
16 CenturyTel might be called upon to provide something beyond the normal function in
17 originating a local telephone call, so it would seek compensation for those additional
18 functions. In this case, however, Level 3 would bear all responsibility associated with
19 any FX-like nature of the service, and CenturyTel would have to do nothing more than
20 take the call to the same point of interconnection as it would for any other local call.¹ I

¹ There has also been much confusion over who is providing the "open end" of a FX-like service to the customer. While it is true that CenturyTel is providing dial tone in the originating exchange, it is *only* providing dial tone to *its own originating customer*. Level 3 is the carrier for the called party, and as such, is

1 should also note that under the Washington agreement between the parties, the points of
2 interconnection with Level 3 for the rural companies will be in each CenturyTel local
3 calling area, so CenturyTel is clearly not responsible for *any* functions involved in taking
4 the call outside of its customer's originating local calling area.

5 **Q. YOU MENTIONED IPRS AND CYBERPOP SERVICES. ARE THOSE**
6 **CENTURYTEL OR QWEST SERVICES?**

7 A. No. As I discussed in my direct testimony, Qwest provides an ISP service called
8 Wholesale Dial. That service provides local dial up numbers and aggregation of traffic
9 for ISPs in a manner similar to that used by Level 3. IPRS and CyberPop services are
10 offered by Verizon, but they provide a similar functionality to that provided by
11 Wholesale Dial and Level 3's service. Verizon's "CyberPOP" service is a "Remote
12 Access Service" that allows subscribers to expand into new areas by utilizing Verizon's
13 network infrastructure. In Verizon's website literature for the service it states:

14 CyberPOP enables ISPs to offer dial-up Internet access through
15 Verizon Central Offices serving as remote access solutions. CyberPOP
16 provides analog and digital dial-up modems which permit you to collect,
17 concentrate and transport subscriber's service to your designated ISP
18 location.

providing the local connectivity for its own ISP customer in both the foreign exchange and in the home exchange. I think a significant reason for the confusion here is that CenturyTel, in trying to make its case for additional revenue, is trying to apply terms like "open end" and "closed end" as they would apply in the context of a multiple switch ILEC network. For a CLEC operating with a single switch to serve multiple exchanges, terms like "open end" and "closed end" have little meaning, since there is no second switch from which to draw "dial tone" at the "open end" in the foreign exchange. Thus, in considering CenturyTel's efforts to tie Level 3's service to standard FX network deployment, the Commission should take account of the fact that CLECs like Level 3 deploy their networks differently than ILECs like CenturyTel. As several state commissions have found in equating FX and FX-like services, the proper focus should be on the functionality delivered to the customer, rather than how a given carrier has deployed its network to provide that service.

Verizon also apparently provides a service called Internet Protocol Routing Service (“IPRS”) in its “West” (former GTE) region. Verizon’s on-line literature for IPRS notes:

IPRS expands your infrastructure and service areas to keep pace with the market. You won’t have to invest in technology and risk underutilization or obsolescence. And, growing your network is fast because Verizon already has the infrastructure in place to support you.

Q. DO THESE SERVICES PROVIDE THE SAME FUNCTIONALITY AS LEVEL 3’S SERVICE?

A. Yes. As you can see from these descriptions, Verizon’s services provide the same functionality as Level 3’s service. Both CyberPOP and IPRS are targeted at ISP customers, and each provides the customer a local number in a local calling area where the customer is not physically located, permitting the customer to establish a “virtual” presence in that local calling area without incurring the expense of deploying additional facilities in that area. The on-line literature describes the manner in which IPRS service is provided:

IPRS assigns you ports into Verizon access servers. When your customer wants Internet connection, their calls go through the local telephone network to the IPRS hub. There, IPRS connects and aggregates your customer traffic and delivers it over a fast packet connection to your POP.

As you can see, Verizon’s service is very similar to Level 3’s service – with hubbing service, aggregation of calls, and delivery to points of presence located in other places. Likewise, the website description of the Qwest service touts the fact that it providers ISP customers with “local access telephone numbers.” While the technology may (or

1 may not) differ somewhat, the functionality is the same. For example, Verizon collects
2 locally dialed traffic from customers in foreign exchanges and transports that traffic to
3 the ISP. Verizon recognizes the benefits to the ISP industry when it states, "In a world
4 tuned to online functionality, IPRS can connect you to more revenue and afford a quick
5 competitive advantage."

6 **Q. WHEN A CONSUMER DIALS A NUMBER ASSOCIATED WITH THESE**
7 **VERIZON AND QWEST SERVICES, DOES HE OR SHE DIAL A LOCAL**
8 **CALL?**

9 A. Yes. These services are just a few more examples of the types of services being
10 provided today to provide local connectivity for consumers and their ISPs. Simply
11 because the customer dials a local call does not mean, however, that the service is
12 providing toll-free inward dialing. These are local calls, not toll calls.

13 **Q. IN YOUR OPINION DO THESE SERVICES OFFER FREE INBOUND**
14 **TOLL CALLING AS SUGGESTED BY CENTURYTEL?**

15 A. No. These services provide local calling to access ISPs and other customers.

16 **Q. DOES CENTURYTEL OFFER LOCAL DIAL-UP ACCESS TO ITS**
17 **CUSTOMERS AS WELL?**

18 A. Yes. CenturyTel's online literature for its Internet services at its "Internet Services
19 Customer Portal" discusses the availability of local access numbers in Washington. It
20 also provides information on its "14,000 local dial-up numbers in 150 countries".
21 CenturyTel Internet notes one of the advantages of using these local numbers as,

1 “Significantly cheaper than long distance charges.” Clearly, if toll-free 800 services
2 worked just as well for ISP dial-up services as CenturyTel suggests in this case,
3 CenturyTel Internet would simply use a single 800 number to provide its global roaming
4 access services rather than providing customers with hundreds or thousands of local
5 dial-up telephone numbers across the United States, both inside and outside of the
6 incumbent CenturyTel telephone company serving area.

**IV. CENTURYTEL IS DISCRIMINATING AGAINST
LEVEL 3**

**Q. DO YOU KNOW WHETHER CENTURYTEL IS ATTEMPTING TO STOP
EITHER QWEST OR VERIZON FROM OFFERING THEIR SERVICES IN
WASHINGTON?**

A. I don't believe so. In other states we have asked that question and CenturyTel has indicated that it had no knowledge of ever demanding that other carriers identify the physical location of their customers, nor had it ever apparently inquired which of the other carriers' customers were ISPs. I took that answer to apply to all of CenturyTel's operations, but that could be an incorrect assumption. Nevertheless, to focus only on Level 3's service, and not address other services that provide the same functionality is discriminatory.

To the extent CenturyTel is concerned about Level 3's use of virtual NXX numbers to originate traffic, its claims should also be aimed at traditional services, such as RCF and FX, and also against newer technology-driven market solutions in the form of Wholesale Dial, IPRS and CyberPOP. (For example, in the discussion I provided earlier about RCF, if CenturyTel really wants to be consistent in its position that originating or terminating access charges apply even on locally-dialed calls, it should have already approached every CLEC and ILEC with whom it may share a local calling area, told each of those carriers which customers purchase RCF and where those customers are actually physically located, and demanded that each of those carriers

1 identify the physical locations of each of their customers in return.) It appears that
2 CenturyTel has not opposed the offering of these services or demanded originating
3 access charges from other carriers offering them, even though they enable customers to
4 place local calls instead of toll calls across exchange (or perhaps even LATA)
5 boundaries. Nor, as noted above, has CenturyTel offered to pay originating access
6 charges to other carriers whose customers are calling CenturyTel customers purchasing
7 these kinds of remote services.

8 **Q. ARE YOU SUGGESTING THESE ILEC SERVICES BE BANNED OR THAT**
9 **ACCESS CHARGES BE IMPOSED ON THOSE SERVICES?**

10 A. Not at all. The services provided by Qwest, Verizon and CenturyTel provide an
11 important benefit to consumers and they should be continued. I am suggesting,
12 however, that to treat Level 3's service differently would be discriminatory and
13 anticompetitive.

14 **Q. AT PAGE 16 OF HIS TESTIMONY, MR. COOK SUGGESTS THAT IT**
15 **MUST IMPOSE ACCESS CHARGES ON LEVEL 3 BECAUSE TO DO**
16 **OTHERWISE WOULD BE DISCRIMINATORY. DO YOU AGREE?**

17 A. No. I do agree, however, that a non-discrimination principle is important in markets
18 that retain vestiges of monopoly power. In this case it is clear that it would be
19 discriminatory to impose access charges on Level 3 and not impose access charges on
20 other FX and FX-like services.

1 **Q. CAN CARRIERS IMPOSE ACCESS CHARGES ON ISP-BOUND**
2 **TRAFFIC?**

3 A. No. The ESP exemption specifically exempts ESPs from interstate access charges.
4 ESPs – including ISPs – are treated as end users, rather than carriers, for purposes of
5 the FCC’s interstate access charges. ISPs are allowed to purchase their services from
6 local tariffs and are not subject to access charges. At paragraph 20 of the *ISP Order*,
7 the FCC states as follows:

8 Our determination that at least a substantial portion of dial-up ISP-
9 bound traffic is interstate does not, however, alter the current ESP
10 exemption. ESPs, including ISPs, continue to be entitled to purchase
11 their PSTN links through intrastate (local) tariffs rather than through
12 interstate access tariffs.²
13

14 **Q. AT PAGES 34 AND 38 OF MR. COOK’S TESTIMONY HE AGAIN RAISES**
15 **THE DISCRIMINATION ISSUE. PLEASE COMMENT.**

16 A. Mr. Cook refers to discriminatory treatment “against other carriers.” The problem is
17 that he is focused on the wrong kind of carrier. What he should be concerned with is
18 the discrimination that CenturyTel is attempting to impose on a new entrant – Level 3.

19 At page 36 he claims,

20 ...for interexchange services, the carrier orders and CenturyTel charges
21 the carrier for access services. By rating calls to Level 3’s
22 interexchange services as free or at “bill and keep” compensation,
23 CenturyTel is forced to discriminate against other interexchange
24 services.
25

² In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; **Declaratory Ruling in CC Docket no. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68**; Released: February 26, 1999 (*ISP Order*).

CenturyTel's arguments are not consistent or convincing. As CenturyTel has admitted, FX calls are interexchange calls to which access charges do not apply. Level 3's service is an FX-like service that is dialed, routed and processed in the same manner as all other local calls and access charges should not apply. It would be discriminatory for CenturyTel to impose access charges on Level 3, but not on its own services or those of other ILECs.

Q. DOES IT APPEAR THAT CENTURYTEL'S REAL CONCERNS ARE RELATED MORE TO LOSS OF NEW REVENUE OPPORTUNITIES THAN RESOLVING LEVEL 3'S REQUEST FOR LOCAL INTERCONNECTION?

A. Yes. Mr. Cook's comments at page 34 are instructive in that regard. With respect to Level 3's request for interconnection he states:

...such a request will have a negative impact on numbering resources, while subjecting CenturyTel to certain negative revenue impacts.

It's clear from Mr. Cook's proposals to collect originating compensation or share customer retail revenue, that CenturyTel's real concerns have nothing to do with the supposed cost of interconnecting with Level 3, but instead are focused upon the potential for lost revenues associated with competition. This becomes more clear when one remembers that CenturyTel is its own ISP and might actually lose some of its ISP's customers to the customers served by Level 3.

Q. DO YOU HAVE ANY INFORMATION ON CENTURYTEL'S DIAL UP INTERNET BUSINESS?

1 A. Yes. In addition to what I've discussed earlier about how CenturyTel's ISP touts the
2 benefits of "local" dial-up telephone numbers for its customers, I have found some
3 information indicating how the ISP business fits into the larger CenturyTel operations.
4 In its 2001 annual report at pages 3 and 4, CenturyTel notes that it has 121,500 dial up
5 Internet subscribers and that its Internet revenues increased 66 percent during that year.
6 It appears from this document that its Internet business is one of the fastest growing
7 business segments – if not the fastest – for CenturyTel. The annual report also notes,
8 "Since we face fewer competitors in our non-urban markets, we can continue to
9 increase our focus on the customer relationship and drive lifetime value by further
10 penetration of our products and services." Obviously one of the important services is
11 CenturyTel's Internet service, and "less" as opposed to "more" competitors is
12 beneficial. In fact, CenturyTel recognizes the "unique competitive advantage" it has as
13 the incumbent LEC in its serving territories. At page four of the Annual Report,
14 CenturyTel informs its stockholders and potential stockholders,

15 Owing the 'local loop' and having a direct relationship with customers
16 allows us to offer value-added services such as long distance, Internet
17 and other data services with the convenience of one company, one bill
18 and one telephone call for service.

19
20 The industry and CenturyTel recognize the inherent advantage that ILECs have in their
21 serving territories by virtue of their incumbent monopoly status. To treat new entrant
22 services in a discriminatory manner, and/or to impose artificial costs on those services
23 that are not imposed on the ILEC services, would further advantage CenturyTel. Such

unwarranted preferential treatment would only harm the development of competition and prevent competitive alternatives for consumers.

Q. MR. COOK ARGUES THAT LEVEL 3'S SERVICE "OFFLOADS INTERCARRIER COSTS AND CREATES INTERCARRIER COMPENSATION DISPUTES." (COOK AT 37) IS THAT CORRECT?

A. No. There are no additional costs caused by Level 3's service. Indeed, despite this one unsupported comment, CenturyTel has not even attempted to make such a showing in this proceeding.

Q. DOES LEVEL 3'S SERVICE FORCE CENTURYTEL OR ANY OTHER CARRIER TO REDEFINE ITS LOCAL CALLING SCOPE AS SUGGESTED ABOVE BY MR. COOK AT PAGES 34 - 36?

A. No. Level 3's service has no more impact on CenturyTel's local calling scope than CenturyTel's own FX service, or other similar services offered by CenturyTel itself. Such services and their variants have no impact on the local calling scopes of basic residential or business service.

Q. IF CENTURYTEL'S POSITION WERE ADOPTED IN THIS PROCEEDING WHAT IMPACT WOULD IT HAVE ON LEVEL 3'S SERVICE?

A. CenturyTel has suggested several solutions to this dispute, all of which would be discriminatory, anti-competitive and not in the public interest. CenturyTel would have this Commission:

1. Impose switched access charges on the originating end of all virtual NXX and FX-type calls.

2. Ban virtual NXX and FX-type calls completely;

3. Force Level 3 to purchase 800 service; or,

4. Force Level 3 to jointly provide an FX service with (or purchase an FX service from) CenturyTel.

Q. WHAT IMPACT WOULD THESE PROPOSALS HAVE ON LEVEL 3, AND MORE IMPORTANTLY, ON THE COMPETITIVE MARKET IN WASHINGTON?

A. Three of the options would increase the cost of providing service for no reason and the fourth would prevent Level 3 from providing service. Introducing artificial costs into the market is harmful from several perspectives. First, as we've seen historically in telecommunications, non cost-based pricing harms the effective operation of a market. While the subsidies put in place decades ago were done so with good intentions – with the goal of keeping local rates low – they ultimately have frustrated the introduction of effective competition. Congress, the FCC and most State Commissions have concluded that over time implicit subsidies should be replaced with explicit subsidies, or removed altogether.

Q. WHAT DO YOU MEAN BY ARTIFICIAL COSTS?

A. Artificial costs are any costs that are not associated with the efficient offering of the service. For instance, imposing access charges on a service that has heretofore been a

1 local service would artificially increase the cost of that service. CenturyTel's suggestion
2 to impose switched access charges on Level 3's service would result in an artificial cost
3 increase. Forcing Level 3 to offer a different service (800 service) or to offer a "joint"
4 FX service with another provider would also impose artificial costs that are not cost-
5 based. All such cost increases harm the efficient operation of the market and result in
6 higher costs for consumers. This is all the more troubling a result when one considers
7 that carriers such as SBC, Verizon, and even CenturyTel itself would continue to be
8 able to offer their own FX and FX-like services without the same kind of cost
9 impositions.

10 **Q. WHAT DO YOU MEAN WHEN YOU REFER TO "HIGHER COSTS FOR**
11 **CONSUMERS"?**

12 A. If Level 3 incurs additional costs those costs could result in several different impacts. If
13 the market permits, Level 3 could increase its rates to cover the costs. The higher costs
14 for the ISPs may ultimately translate into higher rates for Internet access for consumers,
15 or simply reduce the profitability of the ISPs. Reduced profitability obviously slows
16 down market penetration and the introduction of new and innovative services. This is
17 especially true in more rural parts of the country.

18 If the market doesn't allow Level 3 to pass along the artificial cost increase,
19 then Level 3 has two choices – accept the reduced earnings based on the lower margin,
20 assuming that margin is sufficient to cover its costs, or do not enter the market.

1 **Q. IN YOUR OPINION, IS IT GOOD POLICY TO ARTIFICIALLY INCREASE**
2 **THE COST OF MARKET ENTRY FOR CLECS?**

3 A. No. New entrants should not be punished for developing new products or for
4 providing existing products in new and innovative ways. At a time when competition is
5 failing and the industry has seen a two trillion dollar reduction in the value of the industry,
6 new entrants should not be artificially handicapped while legacy providers are
7 protected. Even CenturyTel cannot argue – and it has not argued – that handling FX-
8 like traffic will result in higher costs for CenturyTel than the exchange of any other
9 locally dialed call. Absent proof of additional cost, CenturyTel should not be entitled to
10 compensation from Level 3. Instead, the Commission should see CenturyTel’s position
11 for what it is – an attempt to generate a revenue windfall by passing non-existent costs
12 onto a competitor.

13 **V. LEVEL 3’S SERVICE IS A COMPETITIVE**
14 **ALTERNATIVE FOR TRADITIONAL FX SERVICE**
15

16 **Q. THERE IS SIGNIFICANT RHETORIC IN THIS CASE REGARDING THE**
17 **“TYPE” OF SERVICE THAT LEVEL 3 IS OFFERING. PLEASE IDENTIFY**
18 **SOME KEY CHARACTERISTICS TO ANALYZE IN THIS DEBATE.**

19 A. As I noted in my direct testimony, the following characteristics should be considered
20 when viewing various services:

- 21 1. How the service is perceived by consumers;
- 22 2. How the service is dialed by consumers;

1 3. How the calls are routed and processed in the network; and,

2 4. The impact of the service on the ILEC.

3 My direct testimony provided a comparison of the two services in debate – FX or
4 virtual NXX service, and 800 service.

5 Level 3's service, which is provided in essentially the same manner as FX
6 service, is therefore clearly distinct from 800 service. Customers perceive the service
7 as local and the ISPs use the service to acquire a "local presence" for their customers,
8 just like CenturyTel's customers who purchase FX service. (Indeed, one might wonder
9 why ILECs need to offer FX service when 800 service is available to consumers? The
10 reason, of course, is consumer demand for service on an exchange-by-exchange basis
11 to which any reasonable carrier wants to respond.) The Level 3 service is dialed and
12 routed on a local, as opposed to a toll basis. Like FX service, the Level 3 service
13 does not require sophisticated database dips or number conversions, and as such, does
14 not impose those additional costs on the ILEC. The Level 3 service is associated with a
15 specific exchange, and not hundreds or thousands of exchanges normally associated
16 with 800 service.

17 **Q. MR. COOK STATES THAT LEVEL 3'S SERVICE MUST BE ANALOGOUS**
18 **TO AN EXISTING SERVICE AND TREATED ACCORDINGLY. DO YOU**
19 **AGREE?**

20 A. No. Mr. Cook at page 32 says that "...from a regulatory standpoint, the service is
21 either FX service or not." His analysis reveals an incredibly static view of the

telecommunications universe – everything that comes along must fit *exactly and in every respect* into the same box as something already in place in order to justify similar treatment. That is not the way telecommunications regulation should operate, and such a static view of services will only serve to deter innovation and discourage greater efficiency. Level 3's service is what it is³ -- a creative way to offer an FX-like functionality using new technology. The service was developed in response to customer demand, with some variation on technology and as a competitive alternative to existing FX services. Simply because it might be offered in a different manner – indeed the only manner in which Level 3's network is presently capable – does not make it improper in any way and does not justify treating it differently than the ILEC-provided FX and FX-like services with which it competes.

Q. DOES MR. COOK'S DEFINITION OF VNXX SERVICE CONFLICT WITH THE DEFINITION OF FX OR FX-TYPE SERVICE?

A. Not at all. At page 13 of his testimony Mr. Cook provides the following definition of VNXX service:

In simple terms, a VNXX is a 10,000 block of telephone numbers reserved by a carrier and associated in the LERG with a particular rate center, yet calls to the NXX are terminated to customers located in a different (non-local) rate center.

This same definition could apply to traditional FX service. A FX service uses numbers associated in the LERG with a particular rate center to terminate calls for customers located in a different rate center.

³ As discussed in Mr. Hunt's testimony, Level 3's service offering can be described as providing local DID capability, which may or may not include FX-like capability, depending upon the location of any given

1 **Q. AT PAGE 12 OF MR. WEINMAN’S TESTIMONY HE ASSERTS THAT**
2 **LEVEL 3’S SERVICE “...IS IDENTICAL TO TRADITIONAL 800**
3 **SERVICE.” MR. COOK MAKES SIMILAR ARGUMENTS AT PAGE 15.**
4 **IS THIS A PROPER ANALOGY?**

5 A. No. The comparison in my direct testimony clearly shows that Level 3’s service is
6 dramatically different from 800 service, and more comparable to the exchange-by-
7 exchange FX service offered by ILECs like CenturyTel itself. Mr. Cook’s suggestion
8 that CenturyTel would not be compensated for the use of its network as normally
9 associated with 800 service is equally spurious. With Level 3’s service, CenturyTel
10 provides none of the 800 service functions (routing to the access tandem, database
11 dips, number conversion, etc.), and as such is not incurring any costs to justify
12 compensation for those items. Instead, CenturyTel receives what it is entitled to – local
13 revenues associated with origination of the local call to the same point of interconnection
14 through which all locally-dialed calls (“virtual” or “physical”) are routed.

15 **Q. MR. WEINMAN’S EXHIBIT PURPORTS TO SHOW HOW CALLS ARE**
16 **ROUTED UNDER DIFFERENT SCENARIOS. HE USES THAT DIAGRAM**
17 **AS SUPPORT FOR HIS ARGUMENT AT PAGE 11 THAT LEVEL 3’S**
18 **SERVICE IS “MORE LIKE INTEREXCHANGE ‘800’ SERVICE THAN IT**
19 **IS LIKE FX SERVICE.” PLEASE RESPOND.**

20 A. As noted above, Level 3’s service is not more like 800 service than FX service.
21 Nevertheless, I will address Mr. Weinman’s assertions.

1 In general I would note that CenturyTel is trying hard to force Level 3's service
2 into one of several existing traditional service categories to justify its treatment of that
3 service. Other than the obvious benefit to CenturyTel in terms of increased revenue
4 streams and reduced competition, there is no reason from an economic or public policy
5 perspective to try and "pigeon hole" Level 3's service.

6 **Q. MR. WEINMAN'S EXHIBIT WHW-2 IS PROVIDED AS AN EXAMPLE OF**
7 **LEVEL 3'S SERVICE. COULD IT ALSO REPRESENT CENTURYTEL'S**
8 **FX SERVICE?**

9 A. Yes. FX service could be provided for a customer in the Seattle exchange so that
10 consumers in Forks could reach them by dialing a local number. The manner in which
11 that service would be provided – local number in Forks, interexchange facilities to
12 Seattle, etc. – appears to be what Mr. Weinman has described in Exhibit WHW-2.
13 The only possible distinction is who provides the interexchange facilities. In a jointly
14 provided FX service between CenturyTel and Qwest, the interexchange facilities would
15 actually be shared per the meet point agreement.⁴ But again, the functionality provided
16 to consumers is the same – the ability of a customer to have a local dial-up presence
17 where the customer is not physically located. This is the same benefit provided by
18 CenturyTel's FX service, its ISP service and the services of Qwest and Verizon noted

⁴ CenturyTel has suggested that Level 3 could offer a jointly provided FX service with CenturyTel. While that is true, Level 3 has no need or desire to jointly provide its service. Indeed, Level 3 is a competitor of CenturyTel and is trying to distinguish its service from that provided by CenturyTel. The *only* thing required of CenturyTel in this transaction is that it originate calls placed by its end users to a point of interconnection defined by the contract – the same thing that would be required under any local interconnection scenario.

1 above. They may be provided in a technically different manner, they may be billed a
2 little differently, but the functionality is the same.

3 **Q. MR. WEINMAN SEEMS TO SUGGEST THAT BECAUSE FX SERVICE**
4 **USES A PRIVATE LINE OR SOME DEDICATED FACILITIES, IT IS**
5 **DISTINGUISHED FROM LEVEL 3'S SERVICE. DO YOU AGREE?**

6 A. No. As noted above, the precise manner in which the service is provided is not
7 important. Indeed, the Commission should encourage new and creative uses of
8 network technology to offer services. Such offerings allow companies to distinguish
9 their services, provide new features and ultimately attract and keep customers. I would
10 recommend against the Commission issuing such technology-specific rulings, again
11 because these kinds of distinctions will in the end only deter investment and innovation
12 by rewarding those who observe the status quo.

13 **Q. MR. WEINMAN ALSO TRIES TO DISTINGUISH CENTURYTEL'S FX**
14 **SERVICE FROM LEVEL 3'S SERVICE BASED ON THE NATURE OF THE**
15 **CALLING PATTERNS. SPECIFICALLY, AT PAGE 12 OF HIS**
16 **TESTIMONY HE ASSERTS THAT FX SERVICE "IS TYPICALLY**
17 **DESIGNED FOR TWO-WAY TRAFFIC" AS OPPOSED TO LEVEL 3'S**
18 **SERVICE WHICH IS DESIGNED FOR INWARD CALLING ONLY. IS HE**
19 **CORRECT?**

20 A. No. Again, these attempts to pigeon-hole Level 3's service are not helpful. There is no
21 requirement in CenturyTel's tariff that FX service be offered only on a two-way basis.

1 There may very well be situations in which a company would want consumers in one
2 area to be able to call his or her business, but he might not need to be able to call that
3 area on a local basis. As such, one way FX – much like one way EAS -- would
4 completely meet the needs of such a customer. Further, other ILEC services discussed
5 above are one way in nature, and Verizon's IPRS service appears to be aimed
6 exclusively at ISPs who need only one way service, and yet CenturyTel hasn't ever
7 objected to those service offerings in Washington to my knowledge.

8 **Q. IS LEVEL 3'S SERVICE A JOINTLY PROVIDED FX SERVICE?**

9 A. No. Level 3 has no need to enter into jointly provided services. Level 3 does not need
10 CenturyTel's help to handle any FX-type component of the service – all that CenturyTel
11 must do is originate a locally-dialed FX-like call to the same point of interconnection to
12 which it would send any other locally-dialed call between the two companies'
13 customers. Level 3 is then solely responsible for any additional cost, distance, network,
14 etc. required to terminate the call to the more distant customer location.

15 As with traditional FX service, Level 3 is providing both the open end and the
16 closed end of the service. The fact that CenturyTel customers are dialing the Level 3
17 number does not in and of itself mean that CenturyTel is providing the open end of the
18 service – it is not. CenturyTel is simply originating local calls – just as it originates any
19 other local call. Level 3, on the other hand, is providing the complete retail service to its
20 own customer – the ISP.

1 **Q. MR. WEINMAN AT PAGES 9 AND 10 OF HIS DIRECT SUGGESTS THAT**
2 **CENTURYTEL IS PROVIDING THE DIAL TONE AND OTHER OPEN**
3 **END FUNCTIONS FOR LEVEL 3'S SERVICE. IS THAT CORRECT?**

4 A. No. This is part of the confusion I was speaking about earlier. No one disputes that
5 CenturyTel is providing the dial tone for *its own* customers, but CenturyTel fails to
6 recognize that Level 3 is providing the local connectivity for *its* customers. (One could
7 indeed say that Level 3 is providing the "dial tone," but of course in the case of ISPs,
8 they do not require "dial tone" per se because they are not placing outbound calls – the
9 service they require is only inbound in nature.) In the co-carrier arrangement,
10 CenturyTel is doing what it always does – originating local calls for its customers.
11 Simply because Level 3 does not have a switch in the CenturyTel exchange does not
12 mean that it is not providing the service in both the "foreign exchange" and the "home
13 exchange" to its customers. To accept CenturyTel's position that it is providing the
14 "open end" in this case would be equivalent to requiring a CLEC to place a switch in
15 every exchange in which it provides service, because otherwise it could never provide
16 the "open end."

17 **Q. AT PAGE 9 OF MR. COOK'S TESTIMONY HE SUGGESTS THAT FX IS A**
18 **RETAIL SERVICE OFFERING AND THAT SOMEHOW DISTINGUISHES**
19 **IT FROM LEVEL 3'S SERVICE. IS LEVEL 3'S SERVICE A RETAIL**
20 **OFFERING?**

1 A. Yes. Mr. Cook's characterization indicates that even after all these months, and several
2 hearings in other states, JSI remains confused about the nature of Level 3's service. As
3 I noted in my direct testimony, ESPs – including ISPs – are treated as end users, rather
4 than carriers, for purposes of the FCC's interstate access charges. ISPs are allowed to
5 purchase their services from local tariffs, on a retail and not wholesale basis.

6 The service provided to Level 3's customers is a retail service, not a wholesale
7 service. Indeed, ISPs are purchasing services from Level 3's local exchange tariffs.

8 **Q. AT THAT SAME PAGE OF HIS TESTIMONY MR. COOK STATES THAT**
9 **LEVEL 3'S SERVICE PROVIDES A CONNECTION TO AN**
10 **INTERMEDIATE CARRIER. IS THAT PERTINENT OR CORRECT?**

11 A. No. Level 3 is the carrier for the called party in this example and there are no
12 intermediate carriers, unless of course Mr. Cook is referring to the fact that CenturyTel
13 is handing off the traffic originated by its customers to Level 3. That, in and of itself,
14 does not support his position. For instance, CenturyTel shares responsibilities with
15 other carriers for "jointly" provided FX service. Even in what CenturyTel itself might
16 deem a "traditional local" call between a CenturyTel customer and a Level 3 customer,
17 there would be a handoff between the two carriers. Moreover, in the case of transit, it
18 is quite possible that three local exchange carriers might be involved in the completion of
19 a single local telephone call. Thus, the mere fact that two or more carriers might be
20 involved in routing a call does not change the nature of the service from retail to
21 wholesale, or change the call from local to toll.

1 **Q. MR. COOK ALSO STATES THAT FX SERVICE REQUIRES A**
2 **DEDICATED CIRCUIT FROM THE “SUBSCRIBER’S PREMISES TO**
3 **THE HOME END OFFICE, AND THEN TO THE DISTANT END OFFICE.”**
4 **(COOK AT 11) IS THAT YOUR UNDERSTANDING OF CENTURYTEL’S**
5 **FX DEFINITION?**

6 A. No. In the vast majority of FX tariffs, there is no requirement for a dedicated circuit
7 between the subscriber premises and the home end office. The tariff states that the
8 normal exchange will provide the local circuit from the central office to the customer’s
9 premises. While a subscriber may request a dedicated circuit from his or her premise to
10 the central office, that is not required for FX service. I’d also note again that making a
11 public policy distinction based merely upon the kind of transport provided to the distant
12 customer location is inappropriate – the focus should be upon the functionality delivered
13 to the customer, not upon the kind of transport used to get the call to the customer.

14 **Q. MR. COOK SUGGESTS THAT LEVEL 3’S SERVICE IS SIMILAR TO**
15 **ISDN PRI SERVICE USED BY CLECS “TO REAP RECIPROCAL**
16 **COMPENSATION WINDFALLS.” (ID.) HAS LEVEL 3 ASKED FOR**
17 **RECIPROCAL COMPENSATION IN ITS INTERCONNECTION**
18 **AGREEMENT?**

19 A. No. This is a windfall for *CenturyTel* -- which is spared having to terminate these calls
20 on its own facilities -- yet it doesn’t have to compensate Level 3 for performing the
21 termination function. Further, it is my understanding the CenturyTel offers ISDN PRI

1 services today in its tariff. As such, how can CenturyTel complain about carriers
2 purchasing services from its own tariffs? This is an especially curious argument since
3 CenturyTel also serves ISPs, including an ISP affiliate that it apparently serves.

4 **Q. ONE FINAL THOUGHT BEFORE YOU MOVE ON. IF CENTURYTEL**
5 **WERE TO WITHDRAW ITS FX OFFERING, WOULD THAT MAKE**
6 **LEVEL 3'S SERVICE OBSOLETE OR IMPROPER?**

7 A. No. CenturyTel has noted (in at least one jurisdiction) that it has very few FX
8 customers, and has suggested that it may very well withdraw its FX service altogether.
9 The fact that CenturyTel is not offering FX does not change the fact that Level 3's
10 service is in demand and is a competitive approach to offering FX and FX-type services
11 that customers do want.

**VI. LEVEL 3'S SERVICE DOES NOT VIOLATE
NUMBERING GUIDELINES**

Q. MR. COOK STATES THROUGOUT HIS TESTIMONY (AT PAGES 8, 10, 37, 40...) OF HIS TESTIMONY THAT LEVEL 3'S SERVICE VIOLATES ESTABLISHED NUMBERING GUIDELINES. IS THAT A CORRECT STATEMENT?

A. Absolutely not. Mr. Cook cites to the numbering guidelines and even notes the exception for FX service. It should also be noted that the foreign exchange exception is only one of the possible exceptions. As stated in Section 2.5 of the document provided by Mr. Cook, (Exhibit RCC-3) "The guidelines should provide the greatest latitude in the provision of telecommunications services while effectively managing a finite resource." CenturyTel's proposals in this case would severely limit the ability of new entrants – and if taken to their logical conclusion, even incumbents – to offer telecommunications services such as FX and FX type services. This is contrary to the stated intent of the Numbering Guidelines.

Q. IS IT FAIR TO CONCLUDE THAT SERVICES SUCH AS THAT PROVIDED BY LEVEL 3 WERE SPECIFICALLY ANTICIPATED BY THE NUMBERING GUIDELINES?

A. Yes. The specific reference to the "exception of foreign exchange service" and the reference to other exceptions, leads one to conclude that services such as Level 3's service, Qwest's and Verizon's ISP services, and even CenturyTel's FX, RCF, and

1 EAS services and their competitive derivatives were all contemplated by the rules. The
2 fact that these carriers are using numbering resources today to provide their services is
3 clear proof that such services are not in violation of the numbering guidelines.

4 **Q. AT PAGE 10 OF HIS TESTIMONY MR. COOK SUGGESTS THAT**
5 **“WASHINGTON COULD FACE SIGNIFICANT ROUTING AND NUMBER**
6 **EXHAUST ISSUES, AS OTHER SERVICE PROVIDERS ESTABLISH**
7 **NUMEROUS NEW NPA-NXX CODES AND ASSIGN THEM TO THEIR**
8 **CUSTOMERS PHYSICALLY LOCATED OUTSIDE OF THE**
9 **ESTABLISHED RATE CENTER IN ORDER TO COMPETE WITH LEVEL**
10 **3’S SO CALLED FX SERVICE OFFERING.” PLEASE COMMENT.**

11 A. CenturyTel is currently offering its own virtual NXX services in the form of FX and
12 other similar services. To prevent carriers such as Level 3 from providing similar
13 services would prevent competition.

14 CenturyTel, consistent with its desire to eliminate competition with its own FX
15 and ISP services, suggests that because Level 3 utilize NPA-NXX assignments in the
16 provision of FX service, that it should be prohibited from making such a competitive
17 offering available. CenturyTel ignores that its own use of numbering resources for the
18 provision of FX service raises the same concerns. Obviously, numbering resources
19 must be conserved and utilized efficiently. Implementation of conservation measures for
20 numbers and efficient management practices must be adopted by all parties. Prohibiting
21 or encumbering a competitive offering, however, is a discriminatory and anticompetitive

1 method of conserving numbers. Taken to its logical conclusion, the best way to
2 conserve numbers would be to prohibit ALL local competition. But the
3 Telecommunications Act of 1996 requires ILECs to make available to competitors the
4 same capabilities that they make use of themselves.

5 The numbering guidelines that Mr. Cook cited earlier in his testimony
6 specifically anticipate FX services, and the guidelines for assigning numbers apply
7 equally to new entrants and incumbents.⁵ Mr. Cook's solution is to leave the
8 incumbents ensconced with their numbers and services, but exclude new entrants by
9 imposing unwarranted costs on competitive alternatives and limiting access to numbers
10 required to provide such services.

11 It is important to note that nowhere in the CenturyTel testimony does the
12 company agree to treat its FX and FX-like services in the same manner it proposed to
13 treat Level 3's service. To agree to CenturyTel's terms would result in unabashed
14 discrimination to the detriment of competition and consumers.

15 **Q. MR. COOK SUGGESTS AT PAGE 12 OF HIS TESTIMONY THAT**
16 **BECAUSE TRADITIONAL FX SERVICE CUSTOMERS GET NUMBERS**
17 **FROM "AN EXISTING NPA-NXX CODE, THERE ARE NO**
18 **IMPLICATIONS WITH REGARD TO TELEPHONE NUMBER**
19 **EXHAUST." DO YOU AGREE WITH THIS STATEMENT?**

20 **A.** No. Carriers providing either virtual NXX or traditional FX service – or any service for
21 that matter -- need to obtain telephone numbers in every rate center in which a

customer asks for such service. Mr. Cook is suggesting that ILEC FX service does not impact number exhaust because ILECs offer their service from existing number blocks while new entrants must open new number blocks to provide service. Given Mr. Cook's logic, competition would be foreclosed so as to preserve numbers for the incumbents.

Q. DO YOU HAVE ANY INFORMATION ON HOW EFFICIENTLY CENTURYTEL USES ITS EXISTING NXX CODES?

A. Yes. I have attached an exhibit that shows CenturyTel's usage of existing NXX codes (EXHIBIT TJG-4). That information shows that CenturyTel uses about 25% -- at best -- of its available codes. That does not mean that CenturyTel is abusing the Numbering Guidelines. It simply reflects the manner in which codes are distributed by rate center. But, as you can see by this exhibit, even ILECs request 10,000 number blocks when the actual demand -- even over decades -- does not justify that amount of codes. So to blame a particular carrier or a particular service for number exhaust is misleading. The fact is that the historical numbering assignment system, developed when there was one telephone company serving in each area, requires multiple code assignments of larger blocks of numbers in order to serve customers.

Q. AT PAGE 24 OF MR. COOK'S TESTIMONY HE STATES, "LEVEL 3 DOES NOT INTEND TO PROVIDE LOCAL SERVICE TO CUSTOMERS PHYSICALLY LOCATED WITHIN CENTURYTEL'S SERVICE AREA." IS THIS A CORRECT STATEMENT?

⁵ Mr. Cook's suggestion that competitive responses could result in routing and numbering exhaust issues is a "sky is falling"

1 A. Certainly not. Level 3 will be providing a service in those areas to its customers by
2 terminating calls for CenturyTel's customers with those numbers. By virtue of Level
3 3's service, CenturyTel's customers will be able to access additional ISPs on a locally
4 dialed basis thereby providing additional customer choice and competition for Internet
5 access. Indeed, as Mr. Cook is well aware, if numbers are not used within a certain
6 period of time, they must be returned. Level 3 intends to provide numbers for its
7 customers and by virtue of that offering, CenturyTel customers will be able to dial those
8 numbers for their own benefit.

9 **Q. MR. COOK REFERENCES THE MAINE ORDER AT PAGE 13 OF HIS**
10 **TESTIMONY AS AN EXAMPLE OF A COMMISSION THAT**
11 **PROHIBITED VIRTUAL NXX SERVICE AND RECLAIMED NXX CODES.**
12 **IS THAT ORDER RELEVANT TO THIS CASE?**

13 A. I am not a lawyer, so I won't provide a legal opinion on relevance. But from the
14 perspective of one who has worked in the telecommunications business for years, I
15 think the policy considerations that form the basis of the Maine Order are not applicable
16 anymore.

17 **Q. PLEASE EXPLAIN.**

18 A. There are several issues to consider in putting the Maine Order in proper perspective.
19 First, Maine, which is the *only* state to have banned the use of virtual NXX services,
20 did so at a very different time in the rapidly changing telecommunications marketplace.
21 That Order was issued in 1999 at a time when the industry and Wall Street expected

1 local competition to explode. There were hundreds of new entrants and number
2 exhaust was a real concern. As a result of its ruling to prohibit virtual NXX, the Maine
3 Commission reclaimed from one carrier more than 500,000 telephone numbers
4 associated with more than 50 rate centers throughout the entire state. Today, however,
5 with the general demise of competition in the United States, and only a handful of viable
6 CLECs remaining, number exhaust does not loom quite as large.

7 To the extent number exhaust becomes a problem in Washington, it should be
8 noted that carriers such as Level 3 are able to pool NXX codes if necessary and
9 acquire only 1,000 number blocks at a time. This was not the case in Maine in 1998
10 and 1999, when codes could only be assigned and used in larger, more inefficient
11 blocks of 10,000 numbers.

12 Second, the Maine Commission recognized the need to investigate these
13 number assignment practices in a generic proceeding. It would be difficult at best to
14 have numerous orders on the provision of FX-like services emanating from various
15 proceedings. While an arbitration is an appropriate format within which to decide issues
16 specific to two carriers, that does not preclude the Commission from addressing larger
17 policy issues, such as the impact of FX-like services generally on the Washington
18 telecommunications market, in a generic proceeding in the future.

19 Third, even the Maine commission recognized that this issue needed to be
20 considered in the context of both *ILEC* and *CLEC* services. Specifically, when it
21 converted its investigation of this issue into a generic proceeding, the Maine commission

1 stated its intent to consider services offered not only by CLECs, but also the operations
2 of “all incumbent local exchange carriers (ILECs) in Maine, the Telephone Association
3 of Maine (TAM), and intervenors”⁶ Thus, it is not as if Maine decided to treat any
4 one carrier’s service differently based upon the technology or network platform through
5 which it delivered that service.

6 Finally, it should be recognized that the Maine Commission is now re-examining
7 the virtual NXX issue in Docket No. 98-758, as it considers further the implications of
8 its decision to effectively leave Verizon as the single provider of a statewide Internet
9 access telecommunications service. Indeed, at the same time as it decided that it would
10 prohibit such services going forward as offered by *all* carriers, it directed Verizon to
11 devise an alternative service to support toll-free dialing to ISPs.⁷ Thus, even the Maine
12 commission recognized that there is great demand for frequent and regular access to the
13 Internet, that local flat-rate calling for access to the Internet is essential, and that some
14 service must be made available to promote such access.

15 **VII. LEVEL 3 IS NOT AVOIDING ACCESS CHARGES**

16 **Q. AT PAGE 15 OF HIS TESTIMONY, MR. COOK ACCUSES LEVEL 3 OF**
17 **ENGAGING IN “REGULATORY ARBITRAGE” TO AVOID ACCESS**
18 **CHARGES. IS THAT TRUE?**
19

⁶ *Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications L.L.C. d/b/a Brooks Fiber Communications*, Docket No. 98-758, Notice of Investigation (Me. P.U.C. Oct. 6, 1998), at 13.

⁷ *See Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications L.L.C. d/b/a Brooks Fiber Communications*, Docket No. 98-758, Examiner’s Report (Me. P.U.C. Feb. 23, 2000), at 11 (noting that this service was needed “to ensure that internet subscribers are able to continue to subscribe to the internet at reasonable rates”).

1 A. No. While arbitrage in and of itself is not improper, the accusation made by Mr. Cook
2 is very serious. It would be unconscionable for a company to base its business plan –
3 on even part of such a plan – on an illegal premise. Level 3, however, is not engaging in
4 any improper activities by offering its service. The primary purpose of Level 3's service
5 is to provide local connectivity for ISPs, not to avoid access charges. The service that
6 Level 3 provides is a local service to support more widespread and affordable dial up
7 Internet access, not toll service to which access charges would properly apply.

8 **Q. WHEN LEVEL 3 PROVIDES A TOLL SERVICE, DOES IT PAY THE**
9 **APPROPRIATE ACCESS CHARGES?**

10 A. Yes, it does.

11 **Q. HAS THE FCC IDENTIFIED THE DIFFERENCES IN CIRCUMSTANCES**
12 **WHEN RECIPROCAL COMPENSATION APPLIES AND WHEN ACCESS**
13 **CHARGES WOULD APPLY?**

14 A. Yes. At paragraph 1034 of the *Local Competition Order* the FCC stated as follows:

15 Access charges were developed to address a situation in which three
16 carriers – typically, the originating LEC, the IXC, and the terminating
17 LEC – collaborate to complete a long-distance call. As a general
18 matter, in the access charge regime, the long-distance caller pays long-
19 distance charges to the IXC, and the IXC must pay both LECs for
20 originating and terminating access service. By contrast, reciprocal
21 compensation for transport and termination of calls is intended for a
22 situation in which two carriers collaborate to complete a local call. In
23 this case, the local caller pays charges to the originating carrier, and the
24 originating carrier must compensate the terminating carrier for
25 completing the call.⁸

⁸ Before the Federal Communications Commission; In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Services Providers; CC Docket Nos. 96-98 and 95-185; **FIRST REPORT AND ORDER**; Released August 8, 1996; hereinafter referred to as the *Local Competition Order*.

Level 3's FX-type service is a circumstance where two carriers are collaborating to complete a local call, just as would be the case in two neighboring ILECs who cooperate to complete a local call.

Q. MR. COOK STATES AT NUMEROUS PLACES IN HIS TESTIMONY THAT "...THE SERVICE THAT LEVEL 3 IS INTENDING TO PROVIDE IS NOT LOCAL BECAUSE IT DOES NOT ORIGINATE AND TERMINATE WITHIN THE SAME LOCAL CALLING AREA." (COOK AT 16) IS THIS CORRECT?

A. Absolutely not. The Commission determines how to treat services and it is not always based upon the originating and terminating points of the call. The FCC has specifically left that determination to the states. For instance, the FCC stated at paragraph 1035 of the *Local Competition Order* that

...state commissions have the authority to determine what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs.

Since FX services have always been routed and rated as local calls between carriers notwithstanding the fact that they may end up in a more distant location, similar services offered by CLECs (and even the ILECs themselves) should likewise fall within the framework of a local call.

1 **Q. CONTINUING WITH THE THEME -- THAT CLECS SHOULD PAY**
2 **ACCESS CHARGES FOR THEIR VIRTUAL NXX SERVICE -- MR. COOK**
3 **SUGGESTS THAT LEVEL 3 COULD PROVIDE 800 SERVICE TO ITS ISP**
4 **CUSTOMERS AND THEN PAY THE APPROPRIATE ACCESS RATES TO**
5 **CENTURYTEL. (COOK AT 32) IS THIS CORRECT?**

6 A. Well, Level 3 could provide 800 service, but that is not in its business plan – because
7 that is not what customers demand. Instead, Level 3 is offering a local service to its
8 customers, which is what customers are demanding. Indeed, one might very well say
9 the same thing about CenturyTel FX services, or FX-like services that I’ve discussed
10 earlier as offered by Qwest or Verizon. In this regard, it is quite noteworthy that
11 CenturyTel’s own ISP operations tout the significant benefits of a local dial-in number;⁹
12 in fact, rather than advertising an 800 telephone number to their customers to dial in on
13 a global basis, CenturyTel’s ISP proudly offers its own customers “global roaming
14 access” consisting of 14,000 “*local* dial-up numbers in 150 countries.” Clearly,
15 CenturyTel’s own ISP recognizes the benefits to customers and demands of customers
16 in the ISP market for *local* dial-up numbers.

17 The goal should be to ensure that carriers can respond to customers to provide
18 the service they want, in the most efficient manner possible, and through means that do
19 not generate additional costs for other carriers. CenturyTel should not be permitted to
20 dictate the services provided by other carriers just to ensure a particular revenue stream
21 – in this case access charges.

⁹ See Exhibit TJG-5 (CenturyTel Internet Services Customer Portal website).

1 **Q. MR. COOK’S OTHER SOLUTION IS FOR CENTURYTEL AND LEVEL 3**
2 **TO JOINTLY PROVIDE FX SERVICE WITH THE CUSTOMER PAYING**
3 **CENTURYTEL FOR SERVICE AT THE OPEN END AND PAYING LEVEL**
4 **3 FOR THE REMAINDER OF THE SERVICE. IS THIS AN OPTION?**

5 A. Again, CenturyTel is trying to prevent Level 3 from offering services as a CLEC. There
6 is no reason why Level 3 should not be permitted to offer its local DID service in
7 CenturyTel’s exchange while being forced to jointly provide FX with CenturyTel, other
8 than to prevent competition and to ensure that CenturyTel gets a piece of the retail
9 revenue. Level 3 should be permitted to offer its own retail services without having to
10 pay CenturyTel for functions or services that Level 3 can provide on its own.

11 **Q. DOES CENTURYTEL IMPOSE ACCESS CHARGES ON ITS FX SERVICE?**

12 A. No. Because CenturyTel considers its FX service to be a “local” service, it does not
13 impose or pay access charges for the service. If a CenturyTel customer receives a local
14 call in its foreign exchange that is then hauled back to the home exchange, CenturyTel
15 does not treat that call as toll or access. Nor does CenturyTel argue for the imposition
16 of access charges on the virtual NXX services of other ILECs where they share a
17 common local calling area. CenturyTel is trying to create a distinction between Level
18 3’s virtual NXX service and that of its own services. Such an artificial distinction would
19 result in discrimination and an unfair advantage in the market place for the ILECs.

20 **Q. DOES CENTURYTEL HAVE A UNIQUE COMPETITIVE ADVANTAGE BY**
21 **VIRTUE OF OWNING THE LOCAL LOOP?**

1 A. Yes. This is one area where I agree completely with CenturyTel. In its 2001 annual
2 report at page four (which was attached to Level 3's Petition for Arbitration),
3 CenturyTel's management states as follows:

4 UNIQUE COMPETITIVE ADVANTAGE

5
6 Our investment in the local exchange telephone business provides
7 CenturyTel with a unique competitive advantage. Owning the "local
8 loop" and having a direct relationship with customers allows us to offer
9 value-added services such as long distance, Internet and other data
10 services with the convenience of one company, one bill and one
11 telephone call for service.

12
13 It is clear that CenturyTel is attempting to maintain this unique competitive advantage
14 and extend it by imposing unwarranted costs on its competitors and limiting the types of
15 services that they may offer. Such a strategy should be seen for what it is and rejected.

16 **Q. IS THERE A BETTER WAY FOR CENTURYTEL TO ADDRESS THE**
17 **ISSUE OF LEVEL 3'S SERVICE?**

18 A. Yes. CenturyTel should respond through the marketplace to CLEC services such as
19 that proposed by Level 3. By respond I mean that it should craft a service offering that
20 is attractive to ISPs. This is what Verizon has tried to do through its CyberPOP and
21 IPRS service offerings, and what Qwest is trying through its Wholesale Dial services.
22 Such a competitive process would be much more effective in the long run than trying to
23 deter and prevent competition through regulatory channels. CenturyTel's attempt to
24 compete would engender the benefits of competition assumed in the
25 Telecommunications Act of 1996.

**VIII. LEVEL 3'S SERVICE WILL NOT RESULT IN
INCREASES IN LOCAL RATES OR HARM TO
UNIVERSAL SERVICE**

**Q. MR. COOK CLAIMS AT PAGE 41 THAT IF LEVEL 3'S SERVICE IS
ALLOWED THAT LOCAL RATES WILL HAVE TO BE INCREASED. DO
YOU AGREE?**

A. No. This is yet another "sky is falling" argument designed to whip up emotions based upon unsubstantiated claims. Mr. Cook suggests that local calling areas are being expanded and that is not true. Nothing in Level 3's offering would cause ILECs to expand their local calling areas. If that were true, then the existing FX and other similar ILEC-offered services would have already caused the expansion and rates would already be covering those costs.

Mr. Cook's assertion that toll traffic (and its access revenues) will migrate to virtual NXX traffic is also refuted by the facts. FX services have been in place for many decades and toll service still exists. Indeed, I would assume that toll services provide a substantially larger portion of ILEC revenues than FX services.

**Q. WOULD THE DEMAND FOR LOCAL DIAL UP INTERNET ACCESS
EXIST IN CENTURYTEL'S SERVING TERRITORY EVEN IF LEVEL 3
WERE NOT PRESENT?**

A. Yes, it would. Consumers would simply be limited to fewer choices – perhaps only one choice – for this dial up capability. As such, the calls will be made and originated

1 by CenturyTel regardless of who terminates those calls. Absent some provider coming
2 in and duplicating CenturyTel's entire local network, that will always be the case. The
3 cost of those calls is already being recovered through CenturyTel's local rates. Given
4 that tautology, CenturyTel's claims that Level 3's service will impose additional costs
5 are not supportable.

6 **Q. MR. COOK SUGGESTS THAT IXCS WILL HAVE TO ATTEMPT TO**
7 **OFFER A SIMILAR SERVICE TO THEIR ISP CUSTOMERS TO REMAIN**
8 **COMPETITIVE. (COOK AT 37) IS THAT A PROBLEM?**

9 A. No. Competitive activity in the market will benefit consumers and drive efficiencies in
10 the provisioning of services. His suggestion that toll traffic will be replaced by VNXX
11 traffic is misleading. In the case of ISPs in particular, it is incorrect to assume that this
12 same traffic would exist even if it required a toll call. Consumers demand local access
13 for the Internet. The customer would simply find a vendor with a local number and
14 place that call instead. CenturyTel is not losing toll or access revenues.

15 **Q. DOES THAT CONCLUDE YOUR REPLY TESTIMONY?**

16 A. Yes, it does.

